JOHORE REPORT.

[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J. (S.S.), TERRELL, Ag. C.J. (F.M.S.) & AITKEN, Ag. J.A.

June 18, 1941.

TEO BOON HAK ..... Defendant-Appellant

vs.

1. REDUAN BIN HAJI ALI, as Representative of SAMAT BIN HAJI ALI, deceased;
2. REDUAN BIN HAJI ALI;
3. MELAN BIN HAJI ALI ..... Plaintiffs-Respondents.

[JOHORE CIVIL APPEAL No. 1 of 1941]

Land—Recovery of possession—Party competent to sue where land registered in name of guardian—Unregistered lease of land held under E.M.R.—what rights conferred—Courts Enactment, Section 31, not applicable where necessary party not before the Court.

The plaintiffs sued as the next-of-kin of Haji Ali, the original registered owner of certain land held under E.M.R., of which the defendant was in occupation by virtue of an unregistered lease. At the time the action was brought the land was registered in the name of Amir (the administrator of Haji Ali's estate) as guardian of the 2nd and 3rd plaintiffs and of the original 1st plaintiff, all of whom were minors at the time of the said registration, but were no longer minors when they commenced these proceedings. The defendant objected that the plaintiffs were not competent to sue.

Held by Manning, J. that the plaintiffs, being no longer minors, were to be deemed the registered owners, and were therefore free to act without the intervention of a guardian;

Held, on appeal to the Court of Appeal, that although a minor may own land, it is only the person in whose name it is registered who can, in the absence of statutory provision, deal with the land. In a case where land is registered in the name of a person as guardian, that person is the only person competent to sue. The mention of the name of the infant is merely descriptive, and gives notice of a trust, but there is no automatic transfer to the infant upon his coming of age.

Held also by the Court of Appeal that the aid of Section 31 of the Courts Enactment cannot be invoked to give relief to parties who have no right to sue.

Obiter: although, for want of provision in the Land Enactment, a lease of land held under E.M.R. can confer no title upon the lessee, yet it may well impose contractual liabilities upon the lessor.

Cases referred to:—

(1) *M.A.M. Annamalai Chettiar vs. Gwee Chwee Chee* 1 J.L.R. 78.

(2) *S.T.S.P. Raman Chettiar vs. Teo Gee & another* 5 M.L.J. 160.

(3) *Boase v. Cluny Rubber Estates Ltd. & others* (1913) 2 F.M.S.L.R. 130.

(4) *K.A.R.S.T. Arunasalam vs. Abdul Rahman bin Suleiman* 2 M.L.J. 48.

(5) *Ramasamy Chetty v. Fan Seng Yew* (1918) 1 F.M.S.L.R. 354.

(6) *Loke Yew v. Port Swettenham Rubber Company* (1913) A.C. 491.

(7) *Haji Abdul Rahman v. Mohamed Hassan,* (1917) A.C. 209.

(8) *Murugappa Chetty v. Seenivasagam* 5 M.L.J. 217; (1936) F.M.S.L.R. 33.

(9) *Mahabala Bhatta v. Kunhanna Bhatta* I.L.R. 21 Madras 373.

CIVIL APPEAL.

The facts and arguments are fully set out in the judgments below, particularly in the judgment of the trial Judge and in the judgment of Terrell, Ag. C.J. (F.M.S.) in the Court of Appeal.

In the Court of first instance.

Barrett for plaintiffs.

McLeod for defendants.

Manning, J.—The facts in this case are as follows:—There is a piece of rubber land just over 5 acres in extent in the Mukim of Simpang Kiri in the District of Batu Pahat. It is registered in the name of Amir bin Haji Ali as guardian of Samat bin Haji Ali, Reduan bin Haji Ali, and Melan bin Haji Ali. These persons were minors at the time of the registration.

On the 25th May, 1940 the defendant was in possession of this land. A suit for recovery of possession etc. was brought against him by Samat, Reduan and Melan. It was subsequently discovered that Samat was dead and on the 13th October 1940 the Collector of Land Revenue granted administration of his estate to Reduan. The proceedings were amended by the substitution as plaintiff of Reduan as administrator of the estate of Samat.

Mr. Mcleod, for the defendant, first submitted that the plaintiffs were not competent to bring this suit. A plea that they were minors was dropped, but he said that the registered owner of the land was Amir bin Haji Ali and only he could bring an action for recovery of its possession. I did not agree with this submission. The registered owners of the land in the Mukim Register are Samat, Reduan and Melan—Amir's name merely appears because it was necessary, as long as they were minors, that the guardian's name should be

shown. Amir was never the registered owner; he had certain powers derived from his position as guardian, powers which he might exercise, but only on behalf of the owners. It is admitted that at the date of the suit Reduan and Melan were no longer minors. They were therefore free to act without the intervention of a guardian and as the registered owners were competent to take these proceedings.

Mr. Mcleod then relied on two leases of the land to the defendant. The 1st was dated the 22nd November 1933. The lessors were Amir bin Haji Ali and Ramlah binti Haji Arip. The lessee was the defendant. The period was 10 years from the 1st November 1933.

The 2nd lease is dated the 5th August 1939. The lessor is Amir bin Haji Ali as guardian of Samat, Reduan and Melan; and it recites that Samat, Reduan and Melan are the registered owners of the land. The lessee is the defendant. The lease is to expire on the 1st November 1943.

The reason for this second lease was that on the same date, 5th August 1939, the land was transferred from Amir bin Haji Ali and Ramlah binti Haji Arip to Amir bin Haji Ali as guardian of Samat, Reduan and Melan for the sum of $750.

Mr. Barrett, for the plaintiffs, meets the production of these leases with two points. He says that the title to the land is by entry in the Mukim Register under Part III of the Land Enactment, and that land held under such a title cannot be leased. In support of this he cites *M.A.M. Annamalai Chettiar v. Gwee Chwee Chee*[1] and *S.T.S.P. Raman Chettiar v. Teo Gee & another*[2]. In the 1st case Savage-Bailey, J., said at 1 J.L.R. page 81,

> "Part III of the Enactment which is alone applicable to lands held under entry in the Mukim Register makes no provision whatsoever for the creation of leases of land held under such a title and such are not recognised by the Enactment."

In the 2nd case Thorne, J., said at 5 M.L.J. page 161,

> "I entertain some considerable doubt as to whether a proprietor of land held by entry in the Mukim Register can grant an effective lease of his land."

Mr. Barrett's second point is that both the leases are invalid and he relies on section 67 (1) of the Land Enactment, which enacts that no lease for a term exceeding 3 years is valid unless it is registered.

For the defendant Mr. Mcleod did not reply to the argument that the law refused to recognise leases of this description of land. He admitted that the leases were not registered and were legally invalid. He took his stand on the fact that his client had given valuable consideration for his lease and that equity demanded that the Court should recognise it. He cited the case of *Boase v. Cluny Rubber Estates Ltd. & others*[3] and *K.A.R.S.T. Arunasalam v. Abdul Rahman bin Suleiman*[4]. I have been unable to find anything in this latter decision relevant to the point at issue and it must have been cited by mistake.

Mr. Barrett referred me to the case cited in Reay's Digest page 71 para. 83, viz. *Ramasamy Chetty v. Fan Seng Yew*[5] and to the case of *Loke Yew v. Port Swettenham Rubber Co.*[6]. In the 1st case it was held that the clear intention of the Legislature would be nullified if English doctrines of equity were to be invoked for the purpose of putting persons who have not complied with the law in the same position as those who have done so. The Port Swettenham case decided that where a transfer of land is obtained by deliberate fraud, the subsequent registration of the dishonest owner will not avail him to recover the land from the real owner, even though the latter has never been registered.

I am in agreement with Mr. Barrett that these leases, being invalid for want of registration, confer no title on the defendant to hold the land. I agree also that it would be absurd for Courts to hold that where a lessee has given consideration for his lease, the provision as to registration being necessary to validity should be ignored. It has been held that no effective lease can be made of such land as this, but if it could, the lessee should see that it is registered and he has only himself to blame if he suffers afterwards from non-compliance with the law. The *Boase case*[3] cited by Mr. Mcleod does not help him in any way. A husband had transferred property to his wife without complying with the provisions of a certain Statute and the Court below held that no property was transferred. On appeal before two judges Braddell, C.J.C., was in favour of a new trial as the Court below had not tried the real question at issue. Edmonds, J.C., was for allowing the appeal on the ground that property transferred was an equitable interest and the Statute did not apply. These decisions are obviously of no assistance in helping to decide the present case.

The plaintiffs therefore succeed and I order that they be given possession of the land and of the coupon card and the extract of title. In the circumstances I do not order the defendant to render any

account and I do not award any damages. The plaintiffs will have the taxed costs of the suit.

Before the Court of Appeal.

Salt (*McLeod* with him) for defendant-appellant.
Barrett for plaintiffs-respondents.

Terrell, Ag. C.J.—The plaintiffs claimed possession of a piece of land of about five acres held under E.M.R. No. 414, Mukim of Simpang Kiri, Batu Pahat, as against the defendant, who is in possession of the land, the mukim extract, and the rubber coupon card, by virtue of certain unregistered leases or agreements which will expire on the 1st of November, 1943.

The title to the land was as follows. The holding was originally registered in the mukim register in the name of Haji Ali bin Haji Musa, the father of Samat, Reduan and Melan, the original plaintiffs. The date of the registration in Haji Ali's name is the 23rd of May 1922. Sometime before the 5th of March 1929 Haji Ali died, and one of his sons Amir and his wife Ramlah obtained a grant of letters of administration, and on the date mentioned, a transmission in favour of Amir and Ramlah was duly registered. At the same time the land was caveated by the Collector in favour of Ali's four younger children who were then minors.

The next event was that on the 22nd of November 1933 Amir and Ramlah leased the land to the defendant for ten years from the 1st of November 1933, in consideration of a single payment of $300. The defendant went into possession in pursuance of this agreement, and is still in possession.

On the 14th of February 1938 Samat, the first original plaintiff, died, though this fact does not appear to have been brought to the notice of the plaintiffs' solicitor who had filed the plaint on the 29th of April 1940. Up to that date no administration of Samat's estate had been applied for.

On the 5th of August 1939 Amir and Ramlah purported to transfer the land to Amir as guardian of Samat (who was then dead), and of Reduan and Melan. A memorial of this transfer was duly endorsed on the E.M.R. which was personally produced by the defendant for that purpose. On the same day Amir as guardian of Samat, Reduan and Melan, granted to the defendant a lease from the 1st of August 1939 expiring on the same day as the original lease namely the 1st of November 1943. The consideration was stated to be $300. There is no evidence whether this further sum was paid, nor is it material to the decision of the issues raised by the appeal. The plaint, as I have said, is dated the 21st of May 1940. In the defence which was filed on the 20th of June 1940 the defendant alleged that the 1st plaintiff Samat was dead. The trial of the suit before Mr. Justice Manning was on the 11th of February 1941, and plaintiffs' counsel immediately stated that he had been wrongly instructed, and asked that Samat's name be struck out. He did not ask for any substitution. It appears, however, that Reduan applied to the Collector for distribution of Samat's estate on the 11th of May 1940 (Batu Pahat Distribution proceedings 113 of 1940), and that on the 13th October 1940 Reduan was appointed administrator. On being informed of this appointment, the learned Judge ordered that Reduan be substituted for the first plaintiff as administrator of Samat's estate.

The learned trial Judge held that Samat, Reduan and Melan were the registered owners, that Amir was never the registered owner but merely had certain powers derived from his position as guardian, and that as Reduan and Melan were no longer minors, they were competent to take the proceedings without the intervention of Amir. The learned Judge also appears to have held that land held under mukim register cannot be leased, that the so-called leases were invalid for want of registration and conferred no title on the defendant. In the view I take of this case, it is unnecessary to decide this issue. I would, however, point out that the Land Enactment is silent on the subject of leases of land held under E.M.R. There is no provision that they are invalid. It is true that they confer no title, as there is no provision for registration, but it may well be that a lease may confer rights *ex contractu* (see per Edmonds, J.C. in *Boase v. Cluny Rubber Estates Ltd.*[3] and the judgment of the Privy Council in *Haji Abdul Rahman v. Mohamed Hassan*[7] followed in *Murugappa Chetty v. Seenivasagam*[8]).

The chief issue upon which I am unable to agree with the learned trial Judge is the finding that the plaintiffs are the registered owners. The first difficulty in the way of this finding is that the transfer of the 5th of August 1939 by Amir and Ramlah in favour of Amir as the guardian of Samat, Reduan, and Melan, is clearly inoperative so far as concerns Samat, as he was dead. The order of the Collector appointing Reduan the administrator of Samat was never registered. If Samat himself was never on the register as proprietor, the Collector had no authority to register a transmission in favour of Reduan, and did not in fact do so.

Mr. Barrett for the plaintiffs-respondents did not however rely on Samat's title, but argued that Reduan and Melan as tenants in common of 2/3rds of the land

could sue in tort, and he cited *Mahabala Bhatta v. Kunhanna Bhatta*[9] in support of this proposition. I do not say that there may not be cases where some only of tenants in common may be entitled to sue for relief, but it is not necessary to decide this point, as in my opinion Reduan and Melan were for other reasons incompetent to sue. An examination of the register appears to me to indicate Amir and Amir only as proprietor for the purpose of the Land Enactment. There cannot be more than one proprietor in the same interest. Sections 68 and 73 make it quite clear that the proprietor may be a minor (compare section 95 of the F.M.S. Enactment which prohibits the registration of a minor as proprietor), and section 68 (i) makes special provision that where a minor is the proprietor, his guardian if so appointed by the Court may execute a charge on his behalf. But this provision merely provides machinery for a person not on the register executing a charge on behalf of a person who is on the register.

Similar powers are given to registered attorneys by section 73. But in the absence of statutory provision only the registered proprietor can deal with the land. In the present case the proprietor on the register is Amir, and the mention of Samat, Reduan and Melan is merely descriptive, and gives notice of a trust. The Enactment itself makes no provision for the registration of a person as guardian, but reference may be made to section 69 which, on the death of a proprietor, enables his representative to be registered 'as representative.' Section 69 (iii), however, expressly provides that although such representative shall hold the land "for the purposes to which the same is applicable according to equity and good conscience", he shall nevertheless be deemed to be the absolute proprietor thereof. By analogy a person registered as guardian is likewise the absolute proprietor thereof subject to his obligations in law or in equity.

It is true that there is evidence that when the transfer to Amir was registered, Reduan and Melan were no longer infants. But that does not affect the registration. If they had been minors, the guardian would still have remained registered as proprietor after they came of age. There would not have been an automatic transfer of the registered proprietor to the infant who had come of age. The fact that they might have applied under section 42 to be put on the register does not enable them to be treated as proprietors before such application is made. I feel no doubt, therefore, that all three plaintiffs were incompetent to bring this suit.

Mr. Barrett also submitted that the judgment in the Court below should stand because of the provisions of section 31 of the Courts Enactment. This section is as follows:—

> 31. "No decree shall be reversed or substantially varied, nor shall any case be remanded in appeal on account of any misjoinder of parties or causes of action, or any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court."

It is the same as section 31 of the Courts Enactment of the Federated Malay States, and similar to section 26 of the Courts Ordinance of the Colony which, however, omits the words, "any misjoinder of parties or causes of action." As, however, such a misjoinder would clearly be 'an error, defect or irregularity', the meaning of the Colony section would appear to be the same.

I do not think that section 31 can possibly be called in aid to give relief to parties who have no right to sue, nor could the Court of Appeal substitute a decree in favour of Amir who has never been before the Court, and may not even consent to the proceedings. In any event, the defendant may have defences to a suit by Amir which would not be available against the present plaintiffs, and accordingly "the merits would be affected." In my opinion section 31 has no application.

The appeal must be allowed and the order of the Court below set aside, with costs in the Court of Appeal and in the Court below. The costs in the Court of Appeal will include the costs of the Motion to adduce further evidence. The deposit will be paid out to the appellant or his solicitor.

McElwaine, C.J.—I have read the judgment of Terrell, Ag. C.J. (F.M.S.), and I agree with it.

The Mukim Register shows that the land was registered on 23rd March 1922 in the name of Haji Ali bin Haji Musa and that on 25th March 1929 it was transmitted to Amir bin Haji Ali and Ramlah binte Haji Arip, on which day a caveat was filed by the Collector under what is now section 55 (xii) of the Land Code to protect the interests of the four children of Haji Ali deceased. On the 12th August 1939, more than a year and a half after the death of Samat, the land was transferred to Amir bin Haji Ali as guardian of Samat, Reduan and Melan, presumably three of the four children whose interest was protected by the caveat.

I have no doubt that this registration "as guardian" has the same effect as registration of a trustee appointed under section 8 (iv) of the Small Estates Enactment.

In my opinion Amir is the registered owner and was an essential party to these proceedings.

I see no reason why a lease or agreement for a lease should not impose contractual liabilities upon the lessor merely because the lease cannot be registered under the Land Enactment. Non-registration may result in a person acquiring the land from a lessor who is registered as owner not being bound by the lease, provided the lease was not made or promised by the lessor as agent on behalf of such person.

The agreement of lease was first made in 1933 by Amir bin Haji Ali and Ramlah binte Haji Arip, the then registered owners, for a term of ten years to the appellant who was obliged to clear the land once in every six months. In 1939 Amir bin Haji Ali having become the registered owner as guardian, made a new lease to the appellant for the remainder of the ten years. Under this lease the appellant pays the land rent and undertakes to keep the land clearly weeded. The lease recites that $300 is now paid to the lessor and the receipt of this money is acknowledged. Whether or not this is the same $300 as was mentioned in the first lease I do not know, but it is quite clear that the plaintiff gave consideration and that the lease might be enforced against the registered owner, and I am not prepared to assume that the beneficiaries did not receive the money paid by the plaintiff for the lease.

Mr. Barrett referred to section 31 of the Courts Enactment which is to the effect that a decree shall not be reversed on account of misjoinder of parties or causes of action. This is a very different thing to saying that the Court has jurisdiction in case of non-joinder of necessary parties. Amir is the registered owner and, as he is not a party, his rights and liabilities have not been considered.

As he was not made a party the action was not properly constituted, and the appeal is allowed with costs here and below.

Aitken, Ag. J.A.—I have had the advantage of reading the judgments which will be delivered in this appeal by the two senior members of the Court. They cover every substantial point which was raised during the argument, and I entirely agree with the conclusions thereon at which they have arrived.

In these circumstances no useful purpose would be served by my writing a separate judgment to the same effect. I therefore concur in allowing this appeal, and the order as to costs should, in my opinion, be that which is set out in detail at the end of the judgment of the Acting Chief Justice of the Federated Malay States.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J. (S.S.), TERRELL, Ag. C.J. (F.M.S.) & AITKEN, Ag. J.A.

June 21, 1941.

KEPOL BIN SA'ABAN, Administrator of the estate of NYONYA BINTE BAHUDIN alias NYONYA BINTE YOKDIN, deceased ..... Appellant Plaintiff

vs.

HITAM BINTE BAHUDIN ..... Respondent Defendant.

[JOHORE CIVIL APPEAL No. 2 of 1941]

Land Enactment, Sections 42 and 44—Recovery of document of title from former registered proprietor —Obligation to surrender.

When a person has been recorded in a mukim register under Section 42 of the Land Enactment as an owner of land, he is entitled to recover the Extract issued to the person formerly recorded as owner. If it cannot be recovered by means of the powers conferred upon the Collector by Section 44, an action will lie to enforce its surrender.

Case referred to:—

(1) *Waghelda Rajsanji v. Shekh Masludin* 11 Bom. 561. (1886-87) 14 I.A. 89, 96

CIVIL APPEAL.

The facts and arguments appear from the judgments set out hereunder:

In the Court of first instance.

Das for plaintiff.

MacIntyre for defendant.

Manning, J.—In 1938 the name of the defendant was recorded in the register of Mukim V, Batu Pahat, as the owner of a certain piece of land. She had been issued with, and was rightfully in possession of, the usual document of title in such cases, namely an extract from the Mukim Register.

On the 5th August 1939, the plaintiff, as the administrator of the estate of Nyonya binte Bahudin, made an application to the Collector to record the